

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>DAVID MALLOY et al.</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
	:	<b>No. 12-5768</b>
<b>CITY OF PHILADELPHIA, et al.</b>	:	
	:	<b>JURY TRIAL DEMANDED</b>
	:	
<b>Defendants.</b>	:	

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**DEFENDANTS CITY OF PHILADELPHIA AND POLICE  
OFFICER WILLIAM BARNHARDT'S ANSWER TO PLAINTIFF'S  
COMPLAINT WITH AFFIRMATIVE DEFENSES**

Defendants, The City of Philadelphia and Police Officer William Barnhardt through the undersigned counsel, hereby respond to Plaintiff's Complaint as follows:

1. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.
2. Upon information and belief, admitted.
3. Upon information and belief, admitted.
4. Admitted.
5. Admitted.
6. Denied. Answering Defendant is without sufficient knowledge or information to form a belief as to the truthfulness of the averments contained in this paragraph. Strict proof thereof is demanded at the arbitration or trial of this matter.
7. Admitted.
8. Denied. This paragraph contains conclusions of law to which the Rules of Civil

Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

9. Upon information and belief, admitted.

10. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

11. Denied as stated. It is admitted that Officer Barnhardt tased plaintiff twice.

12. Denied only to the extent that “plaintiff does not clarify what is meant by “collapse”.

13. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

#### **COUNT I**

14. Answering Defendant incorporates by reference their answers to paragraphs 1-13, inclusive, as though fully set forth herein.

15. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

16. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

17. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

18. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

19. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

**COUNT II**

20. Answering Defendant incorporates by reference their answers to paragraphs 1-19, inclusive, as though fully set forth herein.

21. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

22. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

23. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

**COUNT III**

24. Answering Defendant incorporates by reference their answers to paragraphs 1-23, inclusive, as though fully set forth herein.

25. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

26. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

27. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

**WHEREFORE**, the Answering Defendants deny that they are liable on the cause of action declared herein, and demand judgment in their favor plus interest and costs.

**COUNT IV**

28. Answering Defendant incorporates by reference their answers to paragraphs 1-27, inclusive, as though fully set forth herein.

29. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

30. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

31. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

32. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

33. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

#### **COUNT V**

34. Answering Defendant incorporates by reference their answers to paragraphs 1-33, inclusive, as though fully set forth herein.

35. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

36. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

37. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

38. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

**COUNT VI**

39. Answering Defendant incorporates by reference their answers to paragraphs 1-38, inclusive, as though fully set forth herein.

40. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

41. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

**WHEREFORE**, the Answering Defendants deny that they are liable on the cause of action declared herein, and demand judgment in their favor plus interest and costs.

**COUNT VII**

42. Answering Defendant incorporates by reference their answers to paragraphs 1-41, inclusive, as though fully set forth herein.

43. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

44. Denied. This paragraph contains conclusions of law to which the Rules of Civil Procedure require no response. Strict proof thereof is demanded at the trial of this matter.

**WHEREFORE**, the Answering Defendants deny that they are liable on the cause of action declared herein, and demand judgment in their favor plus interest and costs.

Date: \_\_\_\_\_

\_\_\_\_\_  
**MARK V. MAGUIRE**  
Deputy City Solicitor  
14<sup>th</sup> Floor, One Parkway Building  
1515 Arch Street  
Philadelphia, PA 19102-5397

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs have failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Answering defendant assert all of the defenses, immunities, and limitations of damages available to him under the “Political Subdivision Tort Claims Act” and aver that Plaintiff’s remedies are limited exclusively thereto. Act of Oct 5, 1980, No. 142, P.L. 693, 42 Pa. C.S.A. § 8541 et seq.

**THIRD AFFIRMATIVE DEFENSE**

Answering Defendant is immune from liability under the doctrine of qualified immunity.

**FOURTH AFFIRMATIVE DEFENSE**

The plaintiff has suffered no legally cognizable injury, harm, loss, or damage upon which relief can be granted.

**FIFTH AFFIRMATIVE DEFENSE**

The plaintiff’s claims are barred, in whole or in part, to the extent that she has failed to take reasonable measures to mitigate any or all damages.

**SIXTH AFFIRMATIVE DEFENSE**

The plaintiff’s claims are barred, in whole or in part, insofar as Answering Defendant’s purported actions or omissions were not the proximate cause of any alleged injury, loss, or damage incurred by the plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

At all times material to this civil action, Answering Defendant has acted in a reasonable, proper, and lawful manner.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable Statute of Limitations.

**WHEREFORE**, answering Defendant denies that he is liable upon all causes of action declared upon and demand judgment in his favor, plus interest and costs.

Date: \_\_\_\_\_

\_\_\_\_\_  
**MARK V. MAGUIRE**  
Deputy City Solicitor  
14<sup>th</sup> Floor, One Parkway Building  
1515 Arch Street  
Philadelphia, PA 19102-5397

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	:	
<b>Defendants.</b>	:	

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**CERTIFICATE OF SERVICE**

I do hereby certify that service of a true and correct copy of defendant's Answer with Affirmative Defenses has been made available to the following persons by way of the PACER ECF system:

Daniel F. Ashton, Esquire  
One Liberty Place, 51<sup>st</sup> floor  
Philadelphia, PA 19102

Date: \_\_\_\_\_

\_\_\_\_\_ mvm6856  
**MARK V. MAGUIRE**  
Deputy City Solicitor  
14<sup>th</sup> Floor, One Parkway Building  
1515 Arch Street  
Philadelphia, PA 19102-5397